

1 each case, effective as of June 17, 2014, and (2) approving procedures for determining the
2 amounts payable by Debtor under Section 365(b)(1) of the Bankruptcy Code to cure defaults
3 under the assumed Leases and to compensate the counterparties thereto for any actual
4 pecuniary losses resulting from such defaults (each a “Cure Amount” and collectively the
5 “Cure Amounts”).

6 **STATEMENT PURSUANT TO BANKRUPTCY RULE 6006(F)**

7 Each party receiving this motion should review the attached **Exhibit 1**,
8 Schedule of Unexpired Real Property Leases to be Assumed (the “Lease Schedule”), to
9 determine if such party’s name is listed therein as a counterparty to one or more of the Leases
10 described therein. The names of the counterparties to the Leases that are the subject of this
11 motion are listed on the Lease Schedule alphabetically.

12 **BACKGROUND**

13 1. On November 19, 2013 (the “Petition Date”), Debtor filed its
14 voluntary petition under Chapter 11 of the Bankruptcy Code.

15 2. Debtor is continuing in the management and possession of its business
16 and properties as debtor-in-possession under Sections 1107 and 1108 of the Bankruptcy
17 Code. On November 27, 2013, the Official Committee of Unsecured Creditors (the
18 “Committee”) was appointed by the United States Trustee. As of the date hereof, no trustee
19 or examiner has been requested or appointed in this case.

20 3. The current deadline for Debtor to assume or reject its leases of non-
21 residential real property is June 17, 2014 [ECF No. 661].

22 4. Debtor has analyzed each of its leases of non-residential real property,
23 and has determined, in the reasonable exercise of its business judgment, that assumption of

25 is not in writing and that purportedly limits, restricts or impairs Debtor’s rights or benefits
26 under the written documents that evidence the lease.

**Page 2 of 6 - DEBTOR’S OMNIBUS MOTION FOR (1) AUTHORIZATION TO ASSUME UNEXPIRED
REAL PROPERTY LEASES, AND (2) APPROVAL OF PROCEDURES FOR
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Case 13-64561-fra11 Doc 913 Filed 05/19/14

the Leases is in the best interest of Debtor's estate. Debtor will continue to operate stores or otherwise conduct business on the properties subject to the Leases.

5. Debtor has continued to fully and promptly perform its obligations under the Leases and will continue to perform such obligations.

6. The attached Lease Schedule sets forth for each Lease (a) the name(s) of the lessor(s), (b) a brief description of the Lease, and (c) the Cure Amount to be paid by Debtor in connection with the assumption of such Lease as determined by Debtor from its records.

JURISDICTION

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and LR 2100.1. Consideration of this motion constitutes a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A). The statutory predicates for the relief sought by this motion are Sections 105(a), 365(a) and 365(b) of the Bankruptcy Code. Venue is proper under 28 U.S.C. § 1408.

RELIEF REQUESTED

8. By this motion, Debtor seeks entry of an order (a) authorizing Debtor to assume the Leases, in each case effective as of June 17, 2014, and (b) determining that the Cure Amounts payable by Debtor under the Leases are the amounts set forth in the attached Lease Schedule, except to the extent a lessor to a particular Lease timely objects to this motion and disputes the Cure Amount for such Lease and the Court determines a different Cure Amount is payable for such Lease.

POINTS AND AUTHORITIES

9. Pursuant to Section 365 of the Bankruptcy Code, Debtor may assume its unexpired leases. In deciding whether to approve a debtor-in-possession's decision to assume or reject a lease under Section 365, a bankruptcy court ordinarily should defer to Debtor's business judgment where that business judgment is exercised in good faith.

**Page 3 of 6 - DEBTOR'S OMNIBUS MOTION FOR (1) AUTHORIZATION TO ASSUME UNEXPIRED
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1 *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.),* 476
2 F3d 665, 669-70 (9th Cir 2007).

3 10. In the case of an unexpired lease where there has been a default,
4 Section 365(b) conditions the assumption of that lease by a debtor-in-possession (“DIP”) on
5 DIP (a) curing, or providing adequate assurance that DIP will promptly cure, all defaults
6 under the Lease other than certain nonmonetary defaults; (b) compensating, or providing
7 adequate assurance that DIP will promptly compensate, the lessor for any “actual pecuniary
8 loss to such party resulting from such default;” and (c) providing “adequate assurance of
9 future performance” under such Lease.

10 11. Debtor’s decision to assume the Leases represents a sound exercise of
11 business judgment. Debtor, in consultation with its agents and advisors, analyzed each of its
12 store locations and has determined to continue operating stores at the Lease locations.
13 Additionally, if Debtor was to allow the Leases to be deemed rejected under clause (a) of
14 Section 365(d)(4)(A), the estate would be subjected to additional claims arising from
15 rejection of the Leases.

16 12. Debtor will pay the Cure Amounts to the lessors under the assumed
17 Leases, in each case, as soon as is practicable after (a) the date on which an order on this
18 motion is entered, or (b) if there is a dispute concerning the Cure Amount that is not resolved
19 before such order is entered, the date on which the dispute is resolved, whether by agreement
20 or as determined by the Court under a final order. Debtor has the means to make these
21 payments to the lessors. The source of the funding will be advances under Debtor’s approved
22 debtor-in-possession credit facility.

23 13. Debtor can provide “adequate assurance of future performance” under
24 all the Leases. Debtor’s proposed Plan provides for the continuation of Debtor’s operations
25 and the payment of its debts. The term “adequate assurance of future performance” is not
26 statutorily defined. Courts have looked to the legislative history to determine its meaning. *In*

**Page 4 of 6 - DEBTOR’S OMNIBUS MOTION FOR (1) AUTHORIZATION TO ASSUME UNEXPIRED
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1 *re Rachels Indus., Inc.*, 109 B.R. 797, 803 (Bankr. W.D. Tenn. 1990); [In re] *Westview* [74th
2 St. Drug Corp.], 59 B.R. at 754; *In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y.
3 1985); *In re Sapolin Paints, Inc.*, 5 B.R. 412, 420 (Bankr. E.D.N.Y. 1980). The legislative
4 history indicates that Congress intended to give the term “a practical, pragmatic
5 construction.” *Sapolin Paints*, 5 B.R. at 420. Whether “adequate assurance of future
6 performance” has been provided is determined by the facts and circumstances of each case.
7 *In re Texas Health Ents., Inc.*, 72 Fed.Appx. 122, 126 (5th Cir.2003); *In re Gen. Oil Distrib.*,
8 *Inc.*, 18 B.R. 654, 658 (Bankr. E.D.N.Y. 1982); *Chera v. 991 Blvd. Realty Corp. (In re Nat'l*
9 *Shoes, Inc.*), 29 B.R. 55, 59 (Bankr. S.D.N.Y. 1982); *In re Lafayette Radio Elecs. Corp.*, 9
10 B.R. 993, 998 (Bankr. E.D.N.Y. 1981). A debtor need not prove that it will “thrive and make
11 a profit,” *Natco*, 54 B.R. at 440, or provide “an absolute guarantee of performance,” *In re*
12 *Silent Partner, Inc.*, 119 B.R. 95, 98 (E.D. La.1990). It must simply “appear [] that the rent
13 will be paid and other lease obligations met.” *Westview*, 59 B.R. at 755.
14 *In re M. Fine Lumber Co., Inc.*, 383 BR 565, 572-573 (Bankr. E.D.N.Y. 2008).

15 14. Debtor will continue to satisfy its lease obligations. Debtor continues
16 to operate in the ordinary course of business, has DIP financing in place, and is in the process
17 of obtaining replacement financing. Debtor's (and reorganized Debtor's) continued
18 operations and financing will provide it with the funds necessary to continue to satisfy its
19 Lease obligations.

20 15. To the extent any Lease constitutes a shopping center Lease, Debtor's
21 assumption of such Lease will comply with the provisions of 11 U.S.C. § 365(b)(3). Debtor
22 continues to operate its stores in the ordinary course, such that any percentage rent payable
23 under any such Lease will not decline substantially. Furthermore, Debtor's assumption of the
24 Leases is subject to all the provisions thereof (including use provisions), and the assumption
25 will not disrupt any tenant mix or balance in any shopping center.

26
**Page 5 of 6 - DEBTOR'S OMNIBUS MOTION FOR (1) AUTHORIZATION TO ASSUME UNEXPIRED
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16. It is in the best interest of Debtor and its bankruptcy estate to authorize the assumption of the Leases set forth on **Exhibit 1** because such Leases benefit Debtor's operations and the successful reorganization of Debtor.

17. Debtor reserves the right to modify the list of Leases included on Exhibit 1 at any time prior to entry of the order approving this motion

18. Debtor's proposed procedure for determining the Cure Amounts payable by Debtor under the Leases is within the Court's authority under Section 105(a). Section 105(a) grants the Court the power to "issue any order * * * that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." The Court's approval of that procedure will facilitate a fair and prompt determination of Debtor's payment obligations under Section 365(b)(1)(A) and (B).

WHEREFORE, Debtor requests entry of an order, substantially in the form of Exhibit 2 attached hereto, granting the relief requested herein and such other and further relief as is appropriate.

DATED this 19th day of May, 2014.

TONKON TORP LLP

By /s/ Michael W. Fletcher

Albert N. Kennedy, OSB No. 821429
Timothy J. Conway, OSB No. 851752
Michael W. Fletcher, OSB No. 010448
Ava L. Schoen, OSB No. 044072
Attorneys for Debtor

EXHIBIT 1

Schedule of Unexpired Real Property Leases to be Assumed

EXHIBIT 1
SCHEDULE OF UNEXPIRED REAL PROPERTY LEASES TO BE ASSUMED

<u>Lease Counterparty</u>	<u>Store No.</u>	<u>Address of Leased Property (or Properties)</u>	<u>Cure Amount</u>
Arthur C Allyn Trust PO Box 337 Topsfield, MA 1983	23	Ray's Food Place #23 175 N. Weed St. Weed, CA 96094	\$0.00
Bayshore Mall LP c/o General Growth Management 110 N. Wacker Chicago, IL 60606	38	Ray's Food Place #38 3460 Broadway Eureka, CA 95503	\$0.00
Bi-Mart Corporation Attn: Cliff Gerber PO Box 2310 Eugene, OR 97402	56	Shop Smart #56 811 East Central Sutherlin, OR 97479	\$0.00
Browman Development Company, Inc. 1556 Parkside Dr. Walnut Creek, CA 94596	37	Ray's Food Place #37 1500 Anna Sparks Way McKinleyville, CA 95519	\$16,976.62
Bruno's Property Mgmt. LLC 335 Lakeport Blvd. Lakeport, CA 95453	73	Bruno's Shop Smart #73 355 Lakeport Blvd. Lakeport, CA 95453	\$0.00
Bryant, Compton, Pankey, Schmidt and Eberhard Partnership PO Box 457 Redmond, OR 97756	76	Ray's Food Place #76 51537 Highway 97 LaPine, OR 97504	\$0.00
Duane B. Busch Trustee of the Duane B. Busch Trust PO Box 0151 Burlingame, CA 94011-0151	5, 43	Ray's Food Place #5 506 Main Street Rogue River, OR 97537	\$5,887.80
Duane B. Busch Trustee of the Duane B. Busch Trust PO Box 0151 Burlingame, CA 94011-0151	43	Ray's Food Place #43 868 2nd Avenue Gold Hill, OR 97525	\$3,908.33
Canyonville, LLC 14385 SW Pacific Hwy. Tigard, OR 97224	66	Ray's Food Place #66 151 NE Main St. Canyonville, OR 97417	\$5,772.14
Clark's Waldport Market, Inc. 1565 SW Ocean Ct. Waldport, OR 97394	77	C & K Market #77 PO Box 1108 231 Hwy 101 Yachats, OR 97498	\$0.00

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John Hammar LuLu, LLC PO Box 2266 Eugene, OR 97402	39	Ray's Food Place #39 25013 Hwy 126 Veneta, OR 97487	\$2,938.82
Hoopa Valley Development Corp. PO Box 1348 Hoopa, CA 95546	4	Ray's Food Place #4 Highway 96 Hoopa, CA 95546	\$0.00
Carroll V. Johnston, Trustee of the Keith Hanley Johnston and Carroll V. Johnston 1997 Revocable Trust PO Box 35 Willow Creek, CA 95573	75	Ray's Food Place #75 PO Box 5 38915 Hwy 299 Willow Creek, CA 95573	\$2,763.81
Greg Juell Barbara Giuntoli-Juell 1515 Pine St Redding, CA 96001	25	Ray's Food Place #25 124 Collier Way Etna, CA 96027	\$0.00
Greg Juell Barbara Giuntoli-Juell 1515 Pine St Redding, CA 96001	26	Ray's Food Place #26 11307 Main Street Ft. Jones, CA 6032	\$0.00
Robert J. and Nancy J. Komlofske Trust PO Box 1547 Prineville, OR 97554	60	Ray's Food Place #60 1535 NE 3rd Prineville, OR 97754	\$15,696.00
Jean LeRoux 31740 Owl Rd. Eugene, OR 97405	54	Shop Smart #54 51370 Hwy 97 LaPine, OR 97739	\$9,572.79
Al and Suzanne Luis 15070 Middletown Park Dr. Redding, CA 96001	55	Ray's Food Place #55 1555 Oregon Street Port Orford, OR 97465	\$0.00
MNEN Family Limited Partnership c/o Contract Svc Ref #40187 PO Box 34623 Seattle, WA 98124	17	Ray's Food Place #17 909 South Main St. Myrtle Creek, OR 97457	\$5,404.69

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Musil Property Management LLC Kathleen A. Polk, Agent PO Box 787 Cave Junction, OR 97523	28	Shop Smart #28 205 Watkins Street Cave Junction, OR 97523	\$4,334.59
Northgate Enterprises PO Box 1583 Corvallis, OR 97339	18	Ray's Food Place #18 66 Michigan Avenue Bandon, OR 97411	\$0.00
O'Hare Parkway, LLC 1175 East Main Street Medford, OR 97504	N/A (Office Lease)	Medford Office 805 O'Hare Parkway, #100 Medford, OR 97504	\$0.00
Peace Two, LLC 3917 Mount Vista Dr Medford, OR	82	Ray's Food Place #82 215 E Wagner St Talent, OR	\$0.00
R & R Development PO Box 470 Waldport, OR 97394	44	Ray's Food Place #44 580 NE Broadway Waldport, OR 97394	\$0.00
Realty Income PM Dept Bldg Department 2428 Los Angeles, CA 90084	9, 10, 42 and 47	Ray's Food Place #9 126 E Pine Street Central Point, OR 97502	\$75,366.09
		Ray's Food Place #10 735 N Main Street Phoenix, OR 97535	
		Ray's Food Place #42 1139 S Cloverdale Blvd. Cloverdale, CA 95425	
		Ray's Food Place #47 2009 Main Street Fortuna, CA 95540	
Shami Valley West LLC NCIG Property Management 3134 H Street Eureka, CA 95503	7	Ray's Food Place #7 5000 Valley West Blvd. Arcata, CA 95521	\$27,454.57
Andrea L Silver-Merrill PO Box 720330 Redding, CA 96001	24 (Land Lease)	Ray's Food Place #24 160 Morgan Way Mt. Shasta, CA 96067	\$0.00
Robert G. Smith, et. al. 22288 Golftime Dr. Palo Cedro, CA 96073	64	Ray's Food Place #64 875 Redwood Drive Garberville, CA 95542	\$8,506.77

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<u>Lease Counterparty</u>	Store No.	Address of Leased Property (or Properties)	Cure Amount
Susan Elliot Enterprises, LLC Contact: Martial E. Henault 1730 East McAndrews Rd., Suite B Medford ,OR 97504	63	Ray's Food Place #63 401 N. Fifth Street Jacksonville, OR 97530	\$0.00
Taylor Pickhardt Development, LLC PO Box 6713 Bend, OR 97708	45	Ray's Food Place #45 635 N. Arrowleaf Trail Sisters, OR 97759	\$0.00
Triple D Investments, LLC 272 Winter Creek Lane Roseburg, OR 97471	81	Ray's Food Place #81 308 N. First St Drain, OR	\$0.00

EXHIBIT 2

PROPOSED FORM OF ORDER

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re

C & K Market, Inc.,

Debtor.

Case No. 13-64561-fra11

**ORDER GRANTING DEBTOR'S
OMNIBUS MOTION FOR
(1) AUTHORIZATION TO ASSUME
UNEXPIRED REAL PROPERTY
LEASES, AND (2) APPROVAL OF
PROCEDURES FOR DETERMINING
CURE AMOUNTS**

This matter having come before the Court on Debtor's Omnibus Motion for (1) Authorization to Assume Unexpired Real Property Leases, and (2) Approval of Procedures for Determining Cure Amounts (the "Motion") [ECF No. ____], the Court having reviewed the Motion and having considered the statements of counsel and the evidence adduced with respect to the Motion; and the Court having found that (1) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 334; (2) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; (3) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (4) notice of the Motion and the Hearing was sufficient under the circumstances; and after due deliberation the Court having determined that the relief requested in the Motion is in the best interests of Debtor, its estate and the creditors; and good and sufficient cause having been shown,

**Page 1 of 3 - DEBTOR'S OMNIBUS MOTION FOR (1) AUTHORIZATION TO ASSUME
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Case 13-64561-fra11 Doc 913 Filed 05/19/14

IT IS HEREBY ORDERED that:

1. Pursuant to Section 365(a) of the Bankruptcy Code, Debtor's assumption of the unexpired leases of nonresidential real property listed in the Schedule of Assumed Unexpired Real Property Leases attached hereto as Exhibit 1 (each a "Lease"¹ and collectively the "Leases") is approved. Each Lease shall be deemed for all purposes to have been assumed by Debtor effective as of June 17, 2014.

2. The amounts payable by Debtor under Section 365(b)(1) of the Bankruptcy Code (the "Cure Amounts") are the amounts set forth in the attached Schedule of Assumed Unexpired Real Property Leases. Debtor is hereby authorized to pay the Cure Amounts to the lessors under the Leases.

3. This Order shall be effective immediately upon its entry.

4. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

#

¹ "Lease," as used herein, is defined to include all modifications, amendments, supplements, restatements or other agreements made directly or indirectly by any agreement (whether orally or in writing) that in any manner affects a lease, but excludes any of the foregoing that is not in writing and that purportedly limits, restricts or impairs Debtor's rights or benefits under the written documents that evidence the lease.

Page 2 of 3 - DEBTOR'S OMNIBUS MOTION FOR (1) AUTHORIZATION TO ASSUME UNEXPIRED REAL PROPERTY LEASES, AND (2) APPROVAL OF PROCEDURES FOR DETERMINING CURE AMOUNTS

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I certify that I have complied with the requirements of LBR 9021-1(a)(2)(A).

Presented by:

TONKON TORP LLP

By _____

Albert N. Kennedy, OSB No. 821429
Timothy J. Conway, OSB No. 851752
Michael W. Fletcher, OSB No. 010448
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tim.conway@tonkon.com
michael.fletcher@tonkon.com
ava.schoen@tonkon.com

Attorneys for Debtor

cc: List of Interested Parties

Page 3 of 3 - DEBTOR'S OMNIBUS MOTION FOR (1) AUTHORIZATION TO ASSUME UNEXPIRED REAL PROPERTY LEASES, AND (2) APPROVAL OF PROCEDURES FOR DETERMINING CURE AMOUNTS

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Schedule of Unexpired Real Property Leases

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R & R Development PO Box 470 Waldport, OR 97394	44	Ray's Food Place #44 580 NE Broadway Waldport, OR 97394	\$0.00
Realty Income PM Dept Bldg Department 2428 Los Angeles, CA 90084	9, 10, 42 and 47	Ray's Food Place #9 126 E Pine Street Central Point, OR 97502	\$75,366.09
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		Ray's Food Place #42 1139 S Cloverdale Blvd. Cloverdale, CA 95425	
		Ray's Food Place #47 2009 Main Street Fortuna, CA 95540	
Shami Valley West LLC NCIG Property Management 3134 H Street Eureka, CA 95503	7	Ray's Food Place #7 5000 Valley West Blvd. Arcata, CA 95521	\$27,454.57
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Triple D Investments, LLC 272 Winter Creek Lane Roseburg, OR 97471	81	Ray's Food Place #81 308 N. First St Drain, OR	\$0.00

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEBTOR'S OMNIBUS MOTION FOR (1) AUTHORIZATION TO ASSUME UNEXPIRED REAL PROPERTY LEASES, AND (2) APPROVAL OF PROCEDURES FOR DETERMINING CURE AMOUNTS** was served on the parties indicated as "ECF" on the attached List of Interested Parties by electronic means through the Court's Case Management/Electronic Case File system on the date set forth below.

In addition, the parties indicated as "Non-ECF" on the attached List of Interested Parties were served by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each party's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below.

DATED this 19th day of May, 2014.

TONKON TORP LLP

By /s/ Michael W. Fletcher

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034518/00017/5538808v1

LIST OF INTERESTED PARTIES
In re C & K Market, Inc.
U.S. Bankruptcy Court Case No. 13-64561-fra11

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